Court of King's Bench of Alberta

Citation: 420 Investments Ltd (Re), 2025 ABKB 283

Date:
Docket: 2401 17986
Registry: Calgary

In the Matter of the *Companies' Creditors Arrangement Act* RSC 1985, c. C-36, as amended
In the Matter of the Compromise or Arrangement of 420 Investments Ltd., 420 Premium Markets Ltd., Green Rock Cannabis (EC 1) Limited and 420 Dispensaries Ltd.

Reasons for Decision
of the
Honourable Justice M.H. Bourque

Overview

[1] On March 27, 2025, I permitted the filing of a plan of compromise and ordered that a meeting of creditors take place in this matter: ***420 Investments Ltd. (Re)***, 2025 ABKB 183 (***420 #1***) (I have used the same defined terms in these reasons). I also ordered that the stay of proceedings be extended to May 23, 2025. However, I denied High Park the right to vote on the Proposed Plan at the Creditors' Meeting.

[2] The Creditors' Meeting was called for April 11, 2025.

[3] On March 31, 2025, the Monitor served the parties on the service list with the meeting materials, including a blank Affected Creditor Proxy form.

[4] On April 7, 2025, the Applicants amended the Proposed Plan in three distinct ways: (i) to treat all the Applicants' unsecured creditors as Affected Creditors; (ii) to increase the payout to 70 cents on the dollar; and (iii) to provide further details on the creditor options regarding the 30 cents differential.

[5] On April 8, 2025, the Monitor issued a supplement to its Third Report (**Third Report Supplement**), providing an updated analysis of the Proposed Plan. The Monitor recommended that Affected Creditors vote in favour of the Proposed Plan as it was anticipated to provide better

recovery than would be realized in a liquidation scenario or under the Proposed Plan as initially conceived.

[6] On April 9, 2025, the deadline for submission of proxy votes, indicating either a "yes" or "no" vote on the Proposed Plan, the Monitor received two "no" votes from two of the Affected Creditors: one from McCarthy Tétrault LLP (**McCarthy**, **McCarthy Claims**) and the other from Meadowlands Development Corporation (**Meadowlands**, **Meadowlands Claims**). As discussed later, some peculiarities arose with the McCarthy vote, namely that McCarthy initially submitted a yes vote but then submitted a no vote. Meadowlands and McCarthy (in their second vote) appointed Mitchell Gendel (**Mr. Gendel**) as their proxy. As far as I understand, Mr. Gendel is an executive with Tilray.

[7] Although the April 11, 2025 Creditors' Meeting was called to order, it was adjourned to allow the Applicants to seek the Court's assistance in determining whether certain claims were eligible to vote.

[8] The Applicants seek the following:

a. an Order disallowing High Park/Tilray from voting on the Proposed Plan in any capacity, including its own, through an assigned claim or proxy;

b. an Order extending the existing stay to June 30, 2025; and

c. an Order requiring High Park/Tilray to pay solicitor-and-own-client costs.

[9] According to the Applicants, by acquiring the McCarthy and Meadowlands claims, High Park/Tilray is acting not only with an improper purpose, but their actions constitute a collateral attack on my decision in ***420 #1***.

[10] I am not persuaded that the Applicants have demonstrated that High Park/Tilray or Tilray should be disallowed from voting as the assignee of the McCarthy Claim and the Meadowlands Claim. Nor am I persuaded that Tilray acquired the McCarthy Claim and Meadowlands Claim as a collateral attack on my earlier order or that the acquisition is an abuse of process. Given these conclusions, I also dismiss their application for solicitor-and-own-client costs. No party argued against extending the stay. Accordingly, the stay is extended to June 30, 2025.

[11] Before explaining my decision, I note that the Applicants' application, affidavit evidence and bench brief seek relief or address the relief they seek against High Park, not Tilray. The Monitor attached copies of the assignment agreements in its Fourth Report (April 25, 2025). They show Tilray as the assignee of the Meadowlands Claim and McCarthy Claim. The discrepancy is likely explained by the fact that the Applicants' materials were prepared and filed before the Fourth Report was released. I note the discrepancy only to confirm that my decision is the same whether the Applicants seek the relief against High Park or Tilray. To assist the reader of these reasons only, except where it is required by the context to identify High Park or Tilray separately, I refer to High Park and Tilray collectively as High Park/Tilray, including in any discussion of the Applicants' evidence and positions regarding the relief sought against High Park/Tilray regardless of how the Applicants identified them in their materials.

Analytical Framework

[12] Section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36, (**CCAA**) confers broad discretionary powers to the supervising court to "make any order it considers

appropriate in the circumstances". As I explained in ***420 #1***, barring a creditor from voting at a creditors' meeting requires that I undertake a "circumstance-specific inquiry" and exercise my discretion in a manner that "furthers the remedial objectives of the CCAA" guided by "baseline considerations of appropriateness, good faith, and due diligence". See: ***9354-9186 Québec Inc v Callidus Capital Corp***, 2020 SCC 10 at paras 56, 69 and 70 (***Callidus***).

[13] The Applicants rely on ***Laserworks Computer Services Inc, Re***, 1998 NSCA 42. In that case, the Nova Scotia Court of Appeal affirmed the lower court's decision to uphold the Registrar in Bankruptcy's decision to disallow the votes of eighteen creditors who had assigned their claims to a third party. The Registrar concluded that the third party's purpose was to "effect the bankruptcy" of Laserworks and to remove a competitor from the marketplace, thus lessening competition. According to the Registrar, the third party was engaged in an improper purpose not contemplated by the *Bankruptcy and Insolvency Act*.

[14] The Alberta Court of Appeal has endorsed the ***Laserworks*** "improper purpose" approach: see ***Promax Energy Inc v Lorne H Reed & Associates Ltd***, 2002 ABCA 239 at para 2; ***12189811 Canada Inc v Wilks Brothers, LLC***, 2020 ABCA 430 (***CalFrac***). In ***CalFrac***, the majority explained that the inquiry is not only context-specific but also should have regard to the common purpose of restructuring legislation: "facilitating a restructuring that compromises certain legal rights of stakeholders in a manner that is fair having regard to the broader goal – a restructured company for the benefit of all stakeholders". According to the majority, an improper purpose may be found where a stakeholder is acting contrary to that purpose "to thwart the restructuring for its own purposes" (***CalFrac***, at para 66). Moreover, "where a stakeholder is voting for a purpose collateral to the intention of the applicable legislation, its votes can be disregarded" (at para 63).

[15] The Supreme Court of British Columbia has also endorsed the ***Laserworks*** approach: ***Blackburn Developments Ltd. (Re)***, 2011 BCSC 1671, a case arising in CCAA proceedings. In that case, Sewell J held that the decision to deprive the assignee of statutory voting rights should not be taken lightly, only exercised in the "clearest of cases" (para 45). Although the Québec Court of Appeal in ***Callidus*** appears to have endorsed the "clearest of cases" standard, I do not read the Supreme Court of Canada's decision as having adopted it or displaced the usual civil burden of balance of probabilities. In any event, I am not persuaded that the Applicants have met their burden on either standard.

Applicants' Position

[16] The Applicants argue that it would be extremely prejudicial to them and to the "entire body of legitimate creditors" to permit High Park/Tilray to vote on the Proposed Plan through the McCarthy Claim and the Meadowlands Claim. According to his eighth affidavit, Mr. Morrow, the Applicants' Chief Executive Officer, believes that High Park/Tilray's purchase of both the McCarthy Claim and the Meadowlands Claim is "yet another example of its aggressive litigation strategy". He believes that High Park/Tilray is seeking to "block the Plan in order to gain control of and ultimately terminate the Litigation for its own benefit" which, in his "view", are actions that are not in the best interests of the broader stakeholder group, noting that "all other Affected Creditors voted in favour of the Plan". According to the Applicants, High Park/Tilray is the sole outlier whose "interference" might derail an otherwise viable

restructuring. They describe High Park/Tilray's conduct as "fundamentally at odds with the purpose of the CCAA".

[17] The Applicants and Mr. Morrow note that "if the Plan is voted down by High Park, it is not clear what will happen next". They posit that a second SISP could be conducted. However, they say "there is no way of knowing what bids will be received", if a transaction is possible or "what kind of payout Affected Creditors would receive from such a transaction, if anything at all" (emphasis in original). Mr. Morrow says there is substantial risk to Affected Creditors if the Proposed Plan is voted down; he presumes that one reason that all other Affected Creditors voted in favour of the Proposed Plan (or, as he conceded in cross-examination, submitted yes proxies) is to attenuate that "substantial" risk.

[18] Based on their current cashflows, the Applicants submit that there is a significant risk that if the Proposed Plan does not proceed, the resulting delays, increased costs, and additional court proceedings would likely require them to obtain DIP financing, which would rank ahead of existing creditor claims and diminish their recoveries. That said, Mr. Morrow also says in his affidavit that the Applicants are currently cash-flow positive.

Denying High Park/Tilray the right to vote the acquired claims

The McCarthy Claims

[19] In his affidavit, Carl Merton, High Park's Chief Financial Officer, explains that in mid-late November 2024, McCarthy and Tilray entered confidential discussions which led to the execution of a claims assignment agreement pursuant to which Tilray acquired the McCarthy Claims from McCarthy. Effi Barak, McCarthy's then Chief Financial Officer, executed the agreement on McCarthy's behalf. Mr. Merton further explains that Tilray expected, and continues to expect, that potential recoveries from the McCarthy Claims under a revived SISP or revised Plan of Arrangement will greatly exceed the consideration it paid to McCarthy. He further explains, "Tilray is interested in maximizing the potential return to creditors, which includes but is not limited to alternative plans that are more favourable to creditors". The Applicants did not question Mr. Merton on his affidavit, nor did they seek an adjournment of their application to do so.

[20] Mr. Merton also explained his understanding of the circumstances that led to the first McCarthy "yes" vote. Following the decision in ***420 #1***, Tilray contacted Mr. Barak to request that he sign the proxy form. Tilray was advised that Mr. Barak was no longer with McCarthy, but that the individual advising Tilray would follow up with the firm's finance department to have the proxy form signed, which it did. Tilray received the form on April 2, 2025. Mr. Merton explained that before learning that McCarthy had submitted an affirmative vote to the Monitor on April 9, he had no awareness or knowledge of McCarthy either having discussions with the Applicants about the Proposed Plan or having advised the Applicants of the assignment.

[21] The Monitor's Fourth Report reveals that on April 9, 2025, it received the McCarthy "yes" vote at 11:19 AM and the McCarthy "no" vote at 1:44 PM.

[22] In any event, as Mr. Morrow explains: "it appears that not all decision-makers at McCarthys were apprised of this acquisition, as my counsel had been in close contact with a partner in McCarthy's Calgary office who had consistently indicated McCarthys' support for Four20's Plan". Indeed, in an April 10, 2025 email to the Monitor's counsel, Pantelis Kyriakakis,

the Calgary McCarthy partner in question, confirms the assignment of the McCarthy Claims to Tilray.

[23] I accept Mr. Merton's uncontroverted and unchallenged evidence regarding Tilray's purpose in acquiring the McCarthy Claim in November 2024. At that time in these CCAA proceedings, the Applicants were in the midst of a SISP, a course of action they sought, and Jones J. granted it in the fall of 2024. I acknowledge that the Applicants were not bound to accept any bids obtained through the SISP and that they could have pursued a plan of compromise subsequently. However, when the McCarthy Claim was assigned to Tilray, the Applicants were in the midst of their preferred course of action, the SISP, and were not advancing any plan of compromise. For these reasons, the Applicants have not persuaded me that Tilray acquired the McCarthy Claim to defeat the Proposed Plan or for any other improper purpose.

The Meadowlands Claims

[24] Meadowlands is the largest of the Applicants' unsecured creditors affected by both iterations of the Applicants' Proposed Plan – the initial plan that did not include 420 Parent's unsecured creditors as affected creditors and the April 7 amended plan that includes them. The Meadowlands Claim was sufficiently large in value to have blocked approval of the Proposed Plan in its original iteration. Not so under the second iteration now being advanced by the Applicants, as the quantum of the Meadowlands Claim only represents approximately 29% of all unsecured creditors' claims.

[25] As a creditor holding over 40% of the unsecured debts in its voting class in the initial iteration of the Proposed Plan, securing Meadowlands' support for the Proposed Plan was essential. Otherwise, Meadowlands could defeat the Proposed Plan (*CCAA*, s 6). However, on March 11, 2025, 3 days before the creditors' meeting application hearing, it was clear (or it should have been clear) that the Applicants had not earned Meadowlands' support. In his March 11 email, Meadowlands' counsel indicated his client's lack of support for the Proposed Plan, including the following:

> ... More to the point, Meadowlands wants to be paid in full with cash, as Scott Morrow asserted in paragraph 16 of his Affidavit No. 5 would be proposed. Meadowlands has no interest in owning shares of any of the FOUR20 companies, which ultimately in my view will be worthless. Nor is Meadowlands interested in becoming a litigation funder of FOUR20. As such, Meadowlands is not supportive of the Plan and will be opposing the application to file the Plan and the Plan.

[26] Moreover, there is no evidence before me that Meadowlands ever became supportive of any iteration of the Proposed Plan at any subsequent time. On March 28, Meadowlands' counsel asked to be advised if additional funding became available. He noted that his client was less than excited about being a shareholder of 420 or a litigation funder of 420. On April 7, Meadowlands' counsel inquired whether there was an update on new financing. Later that evening, the Applicants' counsel advised that the payout would increase to 70 cents on the dollar. That stands in sharp contrast to Meadowlands' March 11 demand to be paid in full. Two days later, Meadowlands sold its claim to Tilray.

[27] At the April 28 hearing, Applicants' counsel made much of the fact that Meadowlands' counsel did not speak in opposition at the March 14 application. In my view, in determining the merits of the instant application, nothing turns on Meadowlands' lack of spoken opposition on March 14.

[28] Based on the pre-assignment correspondence between Meadowlands and the Applicants, in which Meadowlands never indicated its support for the Proposed Plan, I infer that, but for the assignment of their claim to Tilray, Meadowlands would have voted against either version of the Applicants' Proposed Plan. In the first iteration, Meadowlands' negative vote would have defeated the Proposed Plan. In the second, Meadowlands alone would not have been able to defeat the Proposed Plan, given the dilutive effect of including 420 Parent's unsecured creditors in the Applicants' revised Proposed Plan.

[29] Turning to the amendment of the Proposed Plan, at least two consequences would have arisen if the unsecured creditors of 420 Parent had been included in the initial iteration of the Proposed Plan. First, the weight of Meadowlands' lack of support would no longer defeat the Proposed Plan. Second, by adding approximately $833,000 of unsecured debt at the 420 Parent level to the $1.8MM of unsecured debt at the 420 OpCo and Green Rock levels, the cash recovery to all unsecured creditors would have been less than 55 cents on the dollar.

[30] In his affidavit, Mr. Morrow provides the following vague explanation as to why the initial iteration of the Proposed Plan presented at the March 14 hearing was amended (para 19):

> Initially, [the Applicants] planned to offer payouts only to unsecured creditors of 420OpCo and Green Rock, based on the assumption that creditors who had filed proofs of claim at the 420 Parent level would re-file at the 420 OpCo level, where the funds had actually been used. However, it was later confirmed that the 420 Parent-level creditors would not re-file. As a result, the Plan was amended to include payouts to all unsecured creditors of [the Applicants], regardless of the entity at which their claims were filed.

And at paragraph 25 of his affidavit, Mr. Morrow explains that it was "on April 7, 2025, after securing additional funding from the Lender" that the Proposed Plan was amended to include all of the Applicants' unsecured creditors as Affected Creditors, including 420 Parent's unsecured creditors. Although Mr. Morrow was cross-examined on his affidavit, this questioning did not shed further light on the Applicants' rationale for initially not including the 420 Parent unsecured creditors in the Proposed Plan.

[31] Based on Meadowlands' stated lack of support of the Proposed Plan on March 11, 2025 and their repeated lack of support as late as April 7, 2025, the date on which additional financing was obtained, and the Applicants' failure to clearly articulate the rationale for amending the Proposed Plan to include the unsecured creditors of 420 Parent, I infer that at least one reason the Applicants did so was to ensure that Meadowlands could not defeat the Proposed Plan at the April 11 creditors meeting. As I mentioned, under the second iteration of the Proposed Plan, the Meadowlands Claim would go from representing more than 40% of the value of the unsecured debt in its creditor class under the initial plan to just under 30%.

[32] Turning to Tilray's acquisition of the Meadowlands Claim, Mr. Merton explains that Tilray did so on April 9, 2025, subject to Tilray and Meadowlands finalizing the terms of their agreement, which occurred on April 10, 2025. As an interim measure, Mr. Merton explained that

Tilray and Meadowlands agreed that Meadowlands would complete the proxy form by appointing a Tilray representative as its proxy for voting at the creditors' meeting, indicating a vote against the Plan.

[33] Despite Mr. Morrow's affidavit raising, albeit at times somewhat generally and often hyperbolically, improper motives and intentions on High Park/Tilray's part, Mr. Merton does not explain the reasons for Tilray's acquisition of the Meadowlands Claims. Indeed, he describes Tilray as a leading global consumer packaged goods company, focusing on health-conscious and lifestyle products, and a pioneer in the global cannabis industry, having been involved in pharmaceutical cannabis research, cultivation and distribution for many years. I fail to see how the acquisition of the Meadowlands Claims fits into this billion-dollar enterprise.

[34] Moreover, at para 30 of his affidavit, Mr. Merton explains that it was only on April 9, 2025, *after receipt* of the Supplement to the Monitor's Third Report that described the amendments to the Proposed Plan, which would include the 420 Parent unsecured creditors, that Tilray acquired the Meadowlands Claim.

[35] Given the fact that, combined, the Meadowlands Claim and the McCarthy Claim represent more than 33% of the value of the Applicants' unsecured creditor debt and Tilray's failure to provide a rationale for acquiring the Meadowlands Claim, I infer that Tilray acquired the Meadowlands Claim to defeat the Proposed Plan.

[36] Though I have inferred that Tilray acquired the Meadowlands Claim to defeat the Proposed Plan, I have also inferred that Meadowlands, but for the assignment, also would have voted against the Proposed Plan, leading to the same voting result. In addition, I have also inferred that the Applicants amended the Proposed Plan to include unsecured creditors of 420 Parent to *prevent* Meadowlands from defeating the Plan. Viewing all the circumstances, including those leading to the amendment of the Proposed Plan and the assignment of the Meadowlands Claim, as well as the inevitability of a negative vote on the Meadowlands Claim, regardless of who was voting it, the Applicants have not persuaded me that I should exercise my discretion to disallow Tilray from voting the Meadowlands Claim at the creditors meeting. To be clear, I make this determination solely for the purposes of the current iteration of the Proposed Plan.

Collateral attack on 420 #1 or Abuse of Process?

[37] In their brief, the Applicants submit that High Park/Tilray's acquisition of the McCarthy Claims and the Meadowlands Claim constitutes a collateral attack on my earlier decision to deny High Park the right to vote on the Proposed Plan. Their submissions suggest that I denied High Park the right to vote at the creditors' meeting in any and all respects, whether directly or indirectly.

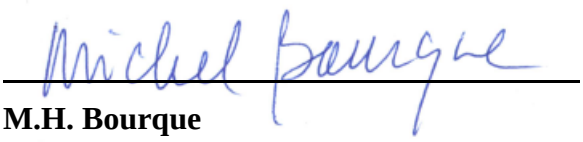
[38] Perhaps my reasons in ***420 #1*** could have been clearer to state that I was denying High Park the right to vote with respect to the Bridge Loan only. Still, at paragraph 63, I explained that I was denying High Park the right to vote on the Proposed Plan because repayment of the Bridge Loan was not currently enforceable and was unlikely to become enforceable for some time. I also explained that a favourable decision in 420 Parent's claim might result in the Bridge Loan being set off against damages awarded. I confirm that my decision to deny High Park the right to vote in ***420 #1*** was solely in its capacity as the creditor of the Bridge Loan and not more broadly.

[39] Accordingly, I reject the Applicants' submissions that High Park/Tilray acquired the McCarthy Claim and the Meadowlands Claim as a collateral attack on my earlier decision. Nor have the Applicants satisfied me that High Park/Tilray have acted in a manner that constitutes an abuse of process.

Disposition

[40] No party argued against the extension of the stay of proceedings. Accordingly, the application to extend the stay to June 30, 2025 is granted. In all other respects, the application is dismissed.

Heard on April 28, 2025.
Dated at Calgary, Alberta, on May 7, 2025.



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Appearances:

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